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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

LILY CHIANG et al., Plaintiffs and Appellants, v. D.R. HORTON LOS ANGELES HOLDING COMPANY, INC., Defendant and Respondent.	G049755 (Super. Ct. No. 30-2013-00649345) O P I N I O N

Appeal from an order of the Superior Court of Orange County, Steven L. Perk, Judge. Reversed.

Kabateck Brown Kellner, Brian S. Kabateck, Richard L. Kellner, Joshua H. Haffner, Drew R. Ferrandini; Bridgford, Gleason & Artinian, Richard K. Bridgford, Michael H. Artinian; McNicholas & McNicholas and John Patrick McNicholas for Plaintiffs and Appellants.

Wood, Smith, Henning & Berman, Stacey F. Blank and Tracy M. Lewis for Defendant and Respondent.

* * *

Plaintiffs Lily Chiang, Pamela Stephens, and Donna Suhr appeal from the trial court's order granting a motion to strike the class action allegations in their first amended complaint. The complaint relates to the use of allegedly defective copper pipes in certain newly constructed homes in Ladera Ranch. The court granted the motion by developer D.R. Horton Los Angeles Holding Company, Inc. (Horton) on the grounds that there "is no reasonable probability the plaintiffs can establish a community of interest among the potential class members" because the "allegations address the plumbing system" rather than a single component. Plaintiffs argue they adequately pleaded a class action and the issues of fact are properly determined upon an evidentiary motion to certify the class.

We agree the complaint is facially sufficient and conclude plaintiffs should be given the opportunity to bring a motion for class certification. We therefore reverse.

I

FACTS

This case is one of several arising from the use of allegedly improper use of defective copper pipe in new homes in Ladera Ranch. This case was initially filed in May 2013, while the operative first amended complaint (the complaint) was filed in July 2013. It alleged Chiang, along with other named class members, purchased a Horton residence constructed with defective copper pipe. The complaint stated the copper pipe had corroded and failed due to Ladera Ranch water conditions, of which Horton was aware at the time it constructed the homes.

With respect to the putative class, the complaint defined the class as "All homeowners in the Class Area whose residences were constructed by D.R. Horton, and which contain copper plumbing or copper pipes in their plumbing systems." The class area was defined as homes in Ladera Ranch that contained copper pipe and components. Common questions of law and facts alleged included, among others: whether the copper pipe was defective for the water conditions in the area; whether defendants had notice,

and to what degree, of those conditions; whether Civil Code section 896, subdivision (a)(15) was violated by using the pipe; whether defendants violated any of the three prongs of the Unfair Competition Law (Bus. & Prof. Code, § 17200, et seq.) (UCL); whether defendants breached any warranties or acted negligently; whether any defenses raised are meritorious; whether the copper pipe has corroded, or needs to be removed or replaced.

The complaint alleged claims for damages based on theories including breach of express and implied warranties, negligence, negligent misrepresentation, products liability, violation of the standards of residential construction (Civ. Code § 895, et seq.), violations of the Consumer Legal Remedies Act (Civ. Code, § 1750, et seq.) (CRLA), and violations of the UCL. Plaintiffs sought monetary, equitable, and declaratory relief on behalf of the class.

On August 23, 2013, Horton filed a motion to strike the class allegations.[1] Horton argued most of the claims were not suitable for class action treatment because common questions did not predominate. Citing to class certification cases, Horton argued the individual issues were too numerous. It also complained the pleading was improperly captioned.

Plaintiffs opposed, arguing the class allegations were adequately pleaded. Defendant filed reply briefs. On January 24, 2014, the trial court heard argument. On January 29, the court ruled, granting defendant's motion. Plaintiffs now appeal.

II

DISCUSSION

Standard of Review

If this was an appeal from a motion denying class certification, we would be reviewing for an abuse of discretion. (*Osborne v. Subaru of America, Inc.* (1988) 198

[1] Defendant also filed a demurrer, which did not specifically address the class allegations, and is not pertinent here.

Cal.App.3d 646, 654.) But it is not. Defendants attempt to quash the class action allegations at the pleading stage, and our standard of review is therefore de novo under the well-settled rules governing appellate review of pleadings. (*Blakemore v. Superior Court* (2005) 129 Cal.App.4th 36, 53.) "A motion to strike, like a demurrer, challenges the legal sufficiency of the complaint's allegations, which are assumed to be true. [Citation.]" (*Id.* at p. 53.) Our review is de novo. (*Ibid.*; see also *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.)

Sufficiency of the Class Action Allegations

Class actions are permitted "when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court . . . ." (Code of Civ. Proc., § 382.)

"Drawing on the language of Code of Civil Procedure section 382 and federal precedent, we have articulated clear requirements for the certification of a class. The party advocating class treatment must demonstrate the existence of an ascertainable and sufficiently numerous class, a well-defined community of interest, and substantial benefits from certification that render proceeding as a class superior to the alternatives. [Citations.]" (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1021 (*Brinker*).) "'In turn, the "community of interest requirement embodies three factors: (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class."' [Citations.]" (*Ibid.*) Courts may also consider whether the class action procedure is "superior" to litigating claims individually. (*Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 332.)

Both parties discuss the propriety of addressing class issues at the pleading stage. There are cases supporting both arguments. (*Prince v. CLS Transportation, Inc.* (2004) 118 Cal.App.4th 1320, 1328; *Silva v. Block* (1996) 49 Cal.App.4th 345, 349-352.)

But we keep in mind that while there are cases where the complaint manifestly fails to adequately plead the existence of a valid class, in general, policy favors that plaintiffs have the chance to conduct discovery and present an evidentiary motion supporting their class claims. (See *In re BCBG Overtime Cases* (2008) 163 Cal.App.4th 1293, 1298, 1301.) To prevail at the pleading stage, the inadequacy of the class action allegations must appear on the face of the complaint.

Horton does not appear to contest the ascertainability question at this time. We therefore move on to the community of interest factors.

The first issue is predominance of common questions. "The 'ultimate question' the element of predominance presents is whether 'the issues which may be jointly tried, when compared with those requiring separate adjudication, are so numerous or substantial that the maintenance of a class action would be advantageous to the judicial process and to the litigants.' [Citations.] The answer hinges on 'whether the theory of recovery advanced by the proponents of certification is, as an analytical matter, likely to prove amenable to class treatment.' [Citation.] A court must examine the allegations of the complaint and supporting declarations [citation] and consider whether the legal and factual issues they present are such that their resolution in a single class proceeding would be both desirable and feasible. 'As a general rule if the defendant's liability can be determined by facts common to all members of the class, a class will be certified even if the members must individually prove their damages.' [Citations.]" (*Brinker*, *supra*, 53 Cal.4th at pp. 1021-1022, fn. omitted.)

Defendant argues construction defect actions are inherently unsuited for class treatment because of the numerous individual factual questions that must be determined on a house-by-house basis. While defendant spends much time discussing how courts have treated construction defect and other types of cases with respect to class certification, it glosses over the only relevant question here: whether the complaint, on its face, adequately pleads the required elements of a class action. Despite defendant's

attempts to confuse the issue, there is nothing here *based on the allegations of the complaint* that suggests that each house is so unique that common facts, such as liability and defenses, cannot be considered as a class.[2]

This is true for all of the causes of action defendant discusses. Defendant seeks to go well beyond the scope of the complaint and judicially noticeable matters to further its argument, but we cannot properly consider such issues. Moreover, defendant's attempt to do so only demonstrates the importance of an evidentiary motion on the class certification issue.

While defendant tries to dance around the issue, much of its argument is really about the differences in damages between the members of the putative class. But variations in damages between members of a putative class alone are not enough to defeat class certification. (*Sav-On Drug Stores, Inc. v. Superior Court*, *supra*, 34 Cal.4th at p. 332.) It also does not appear, from the face of the complaint, that the issues involving damages are so complex as to preclude eventual certification. (*Brown v. Regents of University of California* (1984) 151 Cal.App.3d 982, 990-991.)[3]

Defendant also asserts there will be numerous individual issues regarding causation, but that is not apparent from the face of the complaint. The cases defendant discusses and rely upon are cases where certification was denied after such differences had been established as an evidentiary matter, and are therefore of little value here. (*Evans v. Lasco Bathware, Inc.* (2009) 178 Cal.App.4th 1417, 1430-1431; *Hicks v. Kaufman & Broad Home Corp.* (2001) 89 Cal.App.4th 908, 916.) As presented by the complaint, the fundamental question this case poses is whether the pipes leak. This is the

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[2] Defendant argues that some homeowners purchased their homes before Civil Code section 895 et seq. was adopted in its current form. But whether the differences here are so overwhelming that class treatment must be entirely precluded is not evident from the face of the complaint.

[3] This was also a personal injury case, where individualized damage issues may render the action particularly unsuitable for class determination.

common issue which predominates above all others and is amenable to class treatment. We therefore conclude the trial court erred when it found the complaint, on its face, did not adequately allege the predominance of common questions.

Defendant offers no argument with regard to typicality and adequacy of representation. They do argue a class action is not the superior method of resolving plaintiffs' complaints. Plaintiffs pleaded this in the complaint, stating "[t]he class is so numerous that joinder is impractical and disposition of the class members' claims in a class action is in the best interests of the parties and judicial economy." At this stage, this is sufficient. Plaintiffs are not required to provide evidentiary proof in a pleading. As a whole, given the liberal standards for adequacy of pleading, the complaint sufficiently alleges a class action.

III

DISPOSITION

The court's order granting the motion to strike the class allegations is reversed. The class allegations are ordered restored to the complaint. Plaintiffs are entitled to their costs on appeal.

MOORE, J.

WE CONCUR:

RYLAARSDAM, ACTING P. J.

BEDSWORTH, J.